

In the Matter of)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45

Cincinnati Bell Wireless LLC (“CBW”)¹ requests that the Commission grant it a waiver of the Commission’s Universal Service Fund (“USF”) rules that direct the Universal Service Administrative Company (“USAC”) to calculate the 2004 true-up (i.e., true-up of 2003 projected end-user revenues to actual 2003 end-user revenues) using projected interstate revenues for the first quarter of 2003. Specifically, CBW requests that it be allowed to revise its first quarter 2003 projected interstate end-user revenues to reflect the actual interstate end-user revenues it reported for that quarter as reflected on its April 29, 2003 FCC Form 499-Q. Without grant of this waiver, CBW’s second, third and fourth quarter “actual” interstate revenues will be overstated and, as a result, CBW’s 2003 USF contributions will far exceed the amount that would be due if its first quarter 2003 projections had been adjusted prior to the March 20, 2003 deadline for submitting corrections. A waiver is necessary to correct for this inadvertent consequence of the transitional true-up process that applies for 2003 contributions.

¹ CBW provides broadband PCS service in the Cincinnati and Dayton, Ohio Basic Trading Areas (“BTA”), which includes Cincinnati and Dayton, Ohio, as well as several counties in northern Kentucky and a portion of several southeastern Indiana counties.

DISCUSSION

On December 13, 2003 the Commission released the *Interim Contribution Methodology Order*², which, among other things, determined that beginning with the second quarter 2003, universal service contributions would be based on contributor-provided projections of collected revenues, rather than historical gross-billed revenues. That order also established a process to true up actual versus projected revenue for each year. Subsequently, the Commission adopted the *Reconsideration Order*³ in which it established a transitional true-up process to be used for 2003 contributions. The transitional true-up process was designed to take into account the fact that the new projected revenue-based methodology would only be in effect for three quarters of 2003. The *Reconsideration Order* directed the USAC to calculate the true-up for 2003 revenues by subtracting the revenues projected for the first quarter of 2003 from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor's actual revenues for the second through fourth quarters of 2003 and then comparing this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine the true-up amount.⁴

On July 20, 2004 the Commission released an *Order* granting, in part, waiver requests filed by AT&T Corp. ("AT&T"), SBC Communications Inc. ("SBC"), and the Verizon telephone companies ("Verizon") in which these carriers sought an adjustment to

² *Federal-State Board on Universal Service*, CC Docket No. 96-45, *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*).

³ *Federal-State Board on Universal Service*, CC Docket No. 96-45, *et al.*, Order and Second Order on Reconsideration, 18 FCC Rcd 4818 (2003) (*Reconsideration Order*).

⁴ *Id.*, 18 FCC Rcd at 4824-25, para. 17.

the true-up process for their universal service contributions based on 2003 revenues.⁵ Specifically, the *Order* directed the USAC to utilize these carriers' historical gross billed revenues for the first quarter 2003 reported on their Form 499-Q's filed May 1, 2003, adjusted to reflect the annual uncollectible rate reported on their FCC Form 499-A's filed April 1, 2004 when truing up their 2003 USF contributions. In this Petition, CBW requests the same relief that has already been granted to AT&T, SBC, and Verizon.

CBW's first quarter 2003 revenue projections, as reported on January 31, 2003, were based on historical gross billed revenues. Starting with its May 1, 2003 Form 499-Q (filed by CBW on April 29, 2003), however, CBW began using the 28.5 percent safe-harbor that the Commission established for wireless carriers in the *Interim Contribution Methodology Order*.⁶ The first quarter historical billed interstate end-user revenues and third quarter projected interstate revenues provided on CBW's May 1, 2003 Form 499-Q reflect the safe-harbor percentage, as do the historical and projected interstate end-user revenues for subsequent CBW reports.

Absent a waiver to reflect CBW's actual first quarter interstate revenues, CBW's USF contribution for the 2003 period will be inflated and CBW will be harmed relative to other wireless carriers using the safe-harbor. Without the waiver requested by CBW, the true-up calculation will inappropriately impute interstate revenues for the last three quarters of 2003 in excess of 28.5 percent of CBW's total end-user revenue. This result is inequitable relative to carriers that did not misproject first quarter revenues and relative to other wireless carriers that use the safe-harbor. Implicit in the establishment of the safe-harbor mechanism is the assumption that a carrier using the safe-harbor is

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-170, (rel. July 20, 2004) (*Order*).

⁶ *Interim Contribution Methodology Order*, 17 FCC Rcd 24964-68, paras. 20-27.

automatically assumed to be correctly reporting its interstate revenue. Therefore, to effectively force CBW to report in excess of 28.5 percent of its end-user revenues as interstate for the second, third and fourth quarters of 2003 due to the transitional application of the true-up process for 2003 contributions is inequitable and will cause CBW to contribute more than what is appropriately due based on its actual 2003 end-user revenues.

The relief CBW requests is consistent with that already granted to AT&T, SBC and Verizon. Furthermore, as the Commission found in its July 20, 2004 Order, granting this relief is consistent with the public interest, because first quarter 2003 revenues were not utilized to calculate universal service contributions. Therefore, consistent with Section 1.3 of the Commission's Rules, good cause exists for the waiver that CBW requests.

Accordingly, CBW requests that the Commission grant it a waiver and direct the USAC to calculate CBW's true-up for 2003 contributions by deducting CBW's historical gross billed revenues for the first quarter 2003 as reported on CBW's Form 499-Q filed April 29, 2003, adjusted to reflect the annual uncollectible rate reported on its FCC Form 499-A filed April 1, 2004.

Respectfully submitted,

/s/ James E. Magee

James E. Magee

The Magee Law Firm, PLLC

6845 Elm Street, Suite 205

McLean, Virginia 22101

Telephone (703) 356-7500

Attorney for Cincinnati Bell Wireless LLC

August 11, 2004